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November 13, 2020

Hon. Jesse M. Furman
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

RE: Ibrahim Mizrahi Case No. 18-CR-889 (JMF), USM Number 86309-054

Dear Judge Furman:

As the Court is aware, our firm is counsel to Mr. Ibrahim Mizrahi. On September 25, 2020, this Court extended Mr. Mizrahi's voluntary surrender to CI Moshannon Valley until November 24, 2020, due to the "public health interest in not adding to the prison population at this time." Dkt. 87.

Since the prior extension, there has been an exponential increase in the number of COVID-19 cases throughout the United States. In light of this increase, and the challenges that the global COVID-19 pandemic continues to present, we are writing to respectfully request a further extension of Mr. Mizrahi's voluntary surrender date for 60 days from November 24, 2020. The Government opposes this request for the reasons stated in its prior letter dated September 22, 2020, (Dkt. 86), and relies on its prior letter to state its position. The Government has indicated it will not be filing a new opposition letter.

Despite the Government's position, Mr. Mizrahi's health and welfare, as well as the health and welfare of other prisoners, warrants extending Mr. Mizrahi's surrender date for an additional 60 days.

I. Background

Mr. Mizrahi pled guilty to one count of wire fraud in violation of 18 U.S.C. §1343. He was sentenced to 18 months' imprisonment and ordered to pay \$998,000 in restitution. Mr. Mizrahi was originally scheduled to surrender to CI Moshannon Valley on February 28, 2020, where it was anticipated that he would be placed into removal proceedings through the Institutional Hearing Program. The date was extended by 30 days, however, to allow Mr. Mizrahi time to compile documentation necessary for his immigration court hearings.

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During this same time, the United States began to experience the negative effects of the COVID-19 pandemic. Due to Mr. Mizrahi's poor physical health, the Court granted his requests for extensions of his surrender date. Mr. Mizrahi is now scheduled to surrender November 24, 2020.

II. Request for Extension

Unfortunately, since our last request, the United States has experienced a resurgence in COVID-19 cases, and for three days during the first week of November, the U.S. set single-day records of infections. *See* Lenny Bernstein and Jacqueline Dupree, *U.S. sets another daily record for coronavirus cases as some states struggle*, THE WASHINGTON POST (Nov. 6, 2020), https://www.washingtonpost.com/health/coronavirus-record-high-cases/2020/11/06/fe665856-2066-11eb-90dd-abd0f7086a91_story.html. During the first week of November 2020, the U.S. experienced an increase in COVID-19 cases of 59 percent from the two weeks prior, and the total number of cases in the U.S. has now topped 10 million. *Covid in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (updated Nov. 9, 2020). Significantly, the death toll from the virus has surpassed 238,000. *Id.*

Among those hit hardest by the virus has been U.S. prison inmates and detainees. According to one study, COVID-19 cases in "US federal and state prisons were 5.5 times higher—and death rates three times higher—than in the general population." Mary Van Beusekom, *U.S. Prison Inmates Among Those Hit Hard with COVID-19*, CTR. FOR INFECTIOUS DISEASE RESEARCH & POL'Y (July 9, 2020), <https://www.cidrap.umn.edu/news-perspective/2020/07/us-prison-inmates-among-those-hit-hard-covid-19>.

Outbreaks at prisons have proven very difficult to control, and have continued to increase. *See A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (updated Nov. 6, 2020). Just at the national COVID-19 infection rate has increased recently, the infection rate of people in prisons increased by five percent as of November 3rd, compared to the week prior, for a total of at least 169,286 infections amongst prisoners. *Id.*

While such outbreaks pose obvious dangers to all inmates, the dangers posed to Mr. Mizrahi are particularly high. As documented in a previously-submitted letter from Mr. Mizrahi's physician, Mr. Mizrahi suffers from asthma. The CDC cautions that "[p]eople with moderate to severe asthma may be at higher risk of getting very sick from COVID-19. COVID-19 can affect your nose, throat, lungs (respiratory tract); cause an asthma attack; and possibly lead to pneumonia and acute respiratory disease." *People with Certain Medical Conditions*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#asthma> (updated Nov. 2, 2020). This is especially true for Mr. Mizrahi, who has just recently recovered from a severe case of bronchitis.

Further, Mr. Mizrahi is a nonviolent offender, has fully complied with all terms of his supervised release, and has been given comparatively short sentence. Certainly, an 18-month

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sentence is serious and one that Mr. Mizrahi does not take lightly. However, it is respectfully submitted that the Court should avoid unnecessarily placing Mr. Mizrahi in harm's way of COVID-19.

The same goes with respect to other inmates, who would be similarly placed at risk by the addition of yet another inmate if Mr. Mizrahi were to join them on November 24th. It is well-known that “[p]risons are often filled to capacity and overcrowded, which reduced the ability of inmates to social distance. Furthermore, prison living conditions are not designed for preventing the spread of a virus, especially one as apparently as contagious as the coronavirus.” Dr. Jarrod Sadulski, *Prisons Are Also Battling against the Coronavirus Pandemic*, AM. MILITARY UNIV.: IN PUBLIC SAFETY (Aug. 24, 2020), <https://inpublicsafety.com/2020/08/prisons-are-also-battling-against-the-coronavirus-pandemic/>. These challenges are only further amplified in light of the CDC's recently updated guidance stating that coronavirus can commonly spread “through respiratory droplets or small particles, such as those in aerosols,” which are produced even when a person breathes. Naomi Thomas, *Updated CDC Guidance Acknowledges Coronavirus Can Spread Through the Air*, CNN (Sept. 20, 2020), <https://www.cnn.com/2020/09/20/health/cdc-coronavirus-airborne-transmission/index.html>.

III. Conclusion

In light of the foregoing, we respectfully request that the Court allow Mr. Mizrahi to extend the date of his voluntary surrender by 60 days from November 24, 2020 without prejudice. This extension will serve the best interest of the public welfare, Mr. Mizrahi, and other inmates in federal prisons.

We thank the Court for its attention to these matters, and are available to appear by telephone for a conference to discuss this matter further.

Sincerely,

/s/ Daniel A. Schnapp

Daniel A. Schnapp
Partner

DAS

cc: All counsel by ECF

Application GRANTED. The Clerk of Court is directed to terminate ECF No. 88. SO ORDERED.



November 16, 2020